



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Clamshell Buildings, Inc.

File: B-250520

Date: December 11, 1992

Hassel "Bud" Hill, Jr., Esq., for the protester, Arthur F. Thibodeau, III, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency. John Formica, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The General Accounting Office will not review a procuring agency's affirmative determination of responsibility absent a showing of fraud, bad faith, or the misapplication of a definitive responsibility criterion; a specification requirement that a certain aluminum alloy be used in manufacturing tension fabric structures is not such a criterion.

DECISION

Clamshell Buildings, Inc. protests the award of a contract to Canvas Specialty under request for proposals (RFP) No. N47408-92-C-2018, issued by the Department of the Navy for tension fabric structures. Clamshell contends that the awardee will not comply with a specification requirement regarding the type of aluminum alloy to be used in the structures.

We dismiss the protest.

The RFP, issued on February 13, 1992, contemplated the award of a firm, fixed-price contract for the structures. The agency received five offers in response to the solicitation. Three offers, including those of Clamshell and Canvas Specialty, were included in the competitive range. Discussions were held, and best and final offers received and evaluated. Award was made to Canvas Specialty as the offeror submitting the low cost, technically acceptable offer.

The protester, while recognizing that Canvas Specialty agreed in its proposal to furnish structures in accordance with all of the RFP's requirements, including the requirement that 6061-T6 aluminum alloy be used, speculates

that Canvas Specialty intends to supply structures built with a less expensive aluminum alloy. This is essentially an argument that Canvas Specialty is not a responsible offeror. A determination as to whether a prospective awardee is capable of performing a contract is based largely on subjective judgments, which generally are not subject to reasoned review. Thus, we will not review a contracting officer's affirmative determination of a contractor's responsibility absent a showing that definitive responsibility criteria have not been met, or possible fraud or bad faith on the part of procuring officials. 4 C.F.R. § 21.3(m)(5) (1992); PTR-Precision Techs., Inc., B-243439, Aug. 1, 1991, 91-2 CPD ¶ 110.

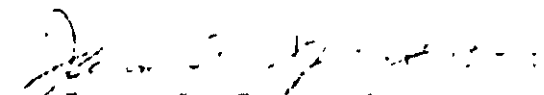
Clamshell argues that the requirement that 6061-T6 aluminum alloy be used in the structures is a definitive responsibility criterion which Canvas Specialty does not intend to meet and that the award to Canvas Specialty was thus made in bad faith.

A definitive responsibility criterion is a specific objective standard that has been established by a procuring agency in a solicitation to measure an offeror's ability to perform--such as a requirement for 5 years of specific experience--with which an offeror must be found to comply as a precondition to receiving award. Lebanon Publishing Co., Inc., B-243149, Apr. 24, 1991, 91-1 CPD ¶ 406; Victaulic Co. of Am., B-217129, May 6, 1985, 85-1 CPD ¶ 500. The specifications here, including the requirement that 6061-T6 aluminum alloy be used in the structures, do not establish a standard relating to an offeror's ability to perform the contract; rather, they serve the sole purpose of describing the items offerors are to agree to supply if they are awarded the contract. Victaulic Co. of Am., *supra*. The 6061-T6 aluminum alloy requirement referenced by the protester is a requirement in the specifications--not a definitive responsibility criterion. Lebanon Publishing Co., *supra*; Victaulic Co. of Am., *supra*.

With regard to the protester's allegation that the award to Canvas Specialty was made in bad faith, the protester has not shown, and the record does not contain, any evidence of bad faith with regard to the agency's selection of Canvas Specialty for award. Instead, to support its allegation of bad faith, the protester, in its comments on the agency report, filed with our Office on November 25, argues for the first time that the award of a contract to the offeror submitting the low cost, technically acceptable offer was inconsistent with the terms of the solicitation, and that as a general matter, awards made on this basis are improper.

The protester's argument here is untimely filed. The protester was on notice that the agency had made award to Canvas Specialty on the basis as of its low cost, technically acceptable proposal, as of the protester's receipt of the agency's report on November 2. In order to be timely under our Bid Protest Regulations, the protester's argument that an award made on this basis was inconsistent with the terms of the solicitation should have been filed within 10 working days of November 2. 4 C.F.R. § 21.2(a)(1). This supplemental allegation, raised for the first time on November 25, more than 3 weeks after its basis was known or should have been known, is thus untimely.¹ Our Bid Protest Regulations do not permit the unwarranted piecemeal presentation of protest issues. Unitor Ships Serv., Inc., B-245642, Jan. 27, 1992, 92-1 CPD ¶ 110 (granting of extension of due date for comments on agency report does not waive timeliness requirements).

The protest is dismissed.


James A. Spangenberg
Assistant General Counsel

¹Clamshell was provided additional time to submit comments on the agency report because of a delay in Clamshell's receipt of relevant documents from the agency.